

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

CAUSE NO. 1:22-cr-127-LG-BWR-1

CARLOS EUGENE JOHNSON

**ORDER DENYING DEFENDANT'S LETTER MOTION AS MOOT AND
DIRECTING CLERK OF COURT TO SEVER DEFENDANT'S LETTER
MOTION INTO NEW CIVIL ACTION**

BEFORE THE COURT is the [44] Letter Motion filed by Defendant, Carlos Eugene Johnson. In the Motion, Defendant requests the return of unspecified property. For the reasons that follow, the Court finds that the [44] Letter Motion is moot, and the Clerk of Court is directed to sever the [44] Letter Motion into a new civil action wherein Johnson is aligned as Plaintiff and the United States of America aligned as Defendant. The Clerk shall file in that new action a copy of this Order as well as the instant [44] Letter Motion. Further, Johnson shall pay the applicable civil filing and administrative fees or submit a completed application to proceed *in forma pauperis* within thirty (30) days of entry of this Order.

BACKGROUND

On December 1, 2022, Defendant entered a plea of guilty to the sole count contained in his Indictment, possession of a firearm while a convicted felon, in violation of 18 U.S.C. § 922(g)(1) and 924(a)(8). On August 22, 2023, he was sentenced to ninety-six (96) months' imprisonment, three years' supervised release, a \$5,000.00 fine with interest waived, and a \$100 special assessment. (See J., ECF

No. 43). On November 28, 2023, Defendant filed the instant [44] Letter Motion, in which he cites his counsel's alleged failure to contact the Government to return his property to him. (*See Mot.*, ECF No. 44). The letter Motion does not specify what property Defendant seeks.

DISCUSSION

Federal Rule of Criminal Procedure 41(g) provides that

[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

Fed. R. Crim. P. 41(g). "After a criminal conviction becomes final, a motion filed under Rule 41(g) in a closed criminal case constitutes a new civil proceeding against the United States within a federal court's general equity jurisdiction under 28 U.S.C. § 1331." *United States v. Mewase*, No. 1:14CR33-HSO-BWR-16, 2023 WL 7414427, at *2 (S.D. Miss. Nov. 9, 2023) (citing *United States v. Mtaza*, 849 F. App'x 463, 465 (5th Cir. 2021)). Hence, the present Motion, filed in a closed criminal case, constitutes a new civil proceeding. Therefore, the Clerk of Court is directed to sever the [44] Letter Motion into a new civil case and to realign Johnson as Plaintiff and the United States of America as Defendant. The Clerk of Court is further directed to file a copy of the [44] Letter Motion as well as this Order in the case. The [44] Letter Motion will thereby be rendered moot for purposes of the criminal case.

Finally, "[f]or the new civil action, [Johnson] must either pay the required \$350.00 civil filing fee plus a \$55.00 administrative fee, or file a completed

application to proceed *in forma pauperis* ('IFP').” *Mewase*, 2023 WL 7414427, at *3. Consequently, Johnson will be required to pay the filing fee or complete an *in forma pauperis* application to maintain his civil action.

IT IS THEREFORE ORDERED AND ADJUDGED that the Clerk of Court is directed to **SEVER** Defendant Carlos Eugene Johnson’s [44] Letter Motion into a new civil case and to file in the new civil action a copy of this Order as well as the [44] Letter Motion.

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk of Court shall realign the parties in the new civil action to reflect Carlos Eugene Johnson as Plaintiff and the United States of America as Defendant. All future pleadings related to the [44] Letter Motion shall be filed in the new civil case only.

IT IS FURTHER ORDERED AND ADJUDGED that Carlos Eugene Johnson shall, **within thirty (30) days of this Order**, (a) pay the required \$350.00 civil filing fee plus \$55.00 administrative fee; or (b) file a completed application for leave to proceed *in forma pauperis*, including the section entitled “Certificate to Be Completed by Authorized Officer” of prison accounts or file an affidavit specifically stating the name of the prison official contacted concerning the Certificate and why this information is not provided to this Court. *See* 28 U.S.C. § 1915(a). The Clerk of Court shall mail Johnson the appropriate forms.

IT IS FURTHER ORDERED AND ADJUDGED that Carlos Eugene Johnson shall submit his fees or completed *in forma pauperis* application, as well as

all future pleadings, to the following address with the civil cause number displayed on each document:

Clerk of Court

United States District Court

2012 15th Street, Suite 403

Gulfport, MS 39501

IT IS FURTHER ORDERED AND ADJUDGED that Carlos Eugene Johnson is **CAUTIONED** that his failure to timely comply with this Order or any future Order of the Court, or his failure to keep the Court apprised of his current address, will be deemed as a purposeful delay and contumacious conduct and may result in dismissal of his case for want of prosecution. *See* Fed. R. Civ. P. 41(b).

IT IS FURTHER ORDERED AND ADJUDGED that the [44] Letter Motion is **DENIED AS MOOT** for purposes of this criminal case.

SO ORDERED AND ADJUDGED this the 1st day of December, 2023.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.

UNITED STATES DISTRICT JUDGE